



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE: JUNE 4, 2014**

### **FINAL MAP APPROVAL OF LODEN PLACE - TRACT NO. 10197**

#### **RECOMMENDED ACTION(S):**

Adopt Resolution approving the following actions:

1. Approve Final Map.
2. Authorize the City Manager to execute the Subdivision Improvement Agreement with City Ventures Homebuilding, LLC.
3. Authorize the recordation of the Final Map and the Subdivision Improvement Agreement.
4. Authorize the City Manager to execute a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney.

#### **EXECUTIVE SUMMARY:**

Loden Place - Tract 10197 is a 42 lot subdivision located on the east side of Hale Avenue, south of Llagas Road (see attached site map). The developer, City Ventures Homebuilding, LLC, has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on May 14, 2013.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provisions with a Title Company to provide the City with the required fees, insurance and bonds prior to recordation of the Final Map. Staff recommends that City Council authorize the City Manager to sign a Subdivision Improvement Agreement on behalf of the City and sign a Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney.

#### **FISCAL/RESOURCE IMPACT:**

Development review costs for this project are paid for from development processing fees.

Agenda Item # **3**

Prepared By:

*Charukhan*

Associate Engineer

Approved By:

*ILB*

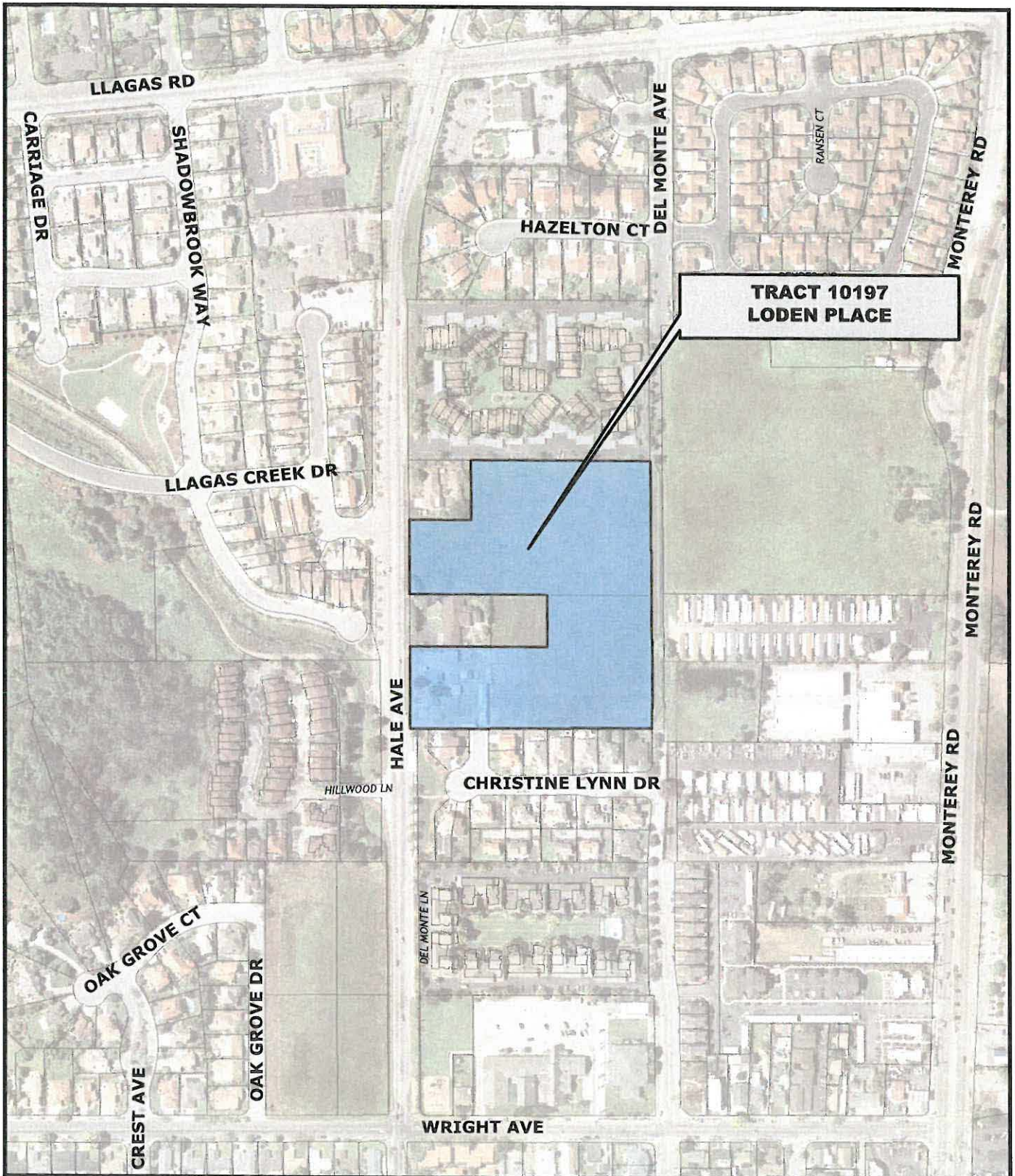
Public Works Director

Submitted By:

*SM*

City Manager





  
 CITY OF MORGAN HILL  
 Engineering Division  
 Public Works

G:\R-14\Proj\GIS\John\Charlie\_Sangregorio\_1\_FinalMap.mxd

**FINAL MAP APPROVAL**  
**LODEN PLACE - TRACT 10197**  
**SITE MAP**

0 125 250 500 750 1,000  
 Feet



**RESOLUTION NO. \_\_\_\_\_**  
**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL**  
**APPROVING THE FINAL MAP OF LODEN PLACE – TRACT NO. 10197,**  
**AUTHORIZING THE CITY MANAGER TO EXECUTE THE SUBDIVISION**  
**IMPROVEMENT AGREEMENT WITH CITY VENTURES HOMEBUILDING, LLC,**  
**AUTHORIZING THE CITY MANAGER TO EXECUTE STORMWATER BEST-**  
**MANAGEMENT-PRACTICES (BMP) OPERATION AND MAINTENANCE**  
**AGREEMENT PENDING THE REVIEW AND APPROVAL OF THE CITY**  
**ATTORNEY, AND AUTHORIZE THE RECORDATION OF THE FINAL MAP AND**  
**THE SUBDIVISION IMPROVEMENT AGREEMENT**

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California (“City”), is authorized to enter into contracts and agreements for the benefit of the City; and

WHEREAS, the reasons supporting the approval of the final map entrance of the City into that certain agreement described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled “Final Map Approval of Loden Place – Tract No. 10197” submitted for City Council consideration at its meeting of June 4, 2014, submitted to the City Council by the City Manager (the “Staff Report”), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, the consideration by City Council of the adoption of this Resolution has been duly noticed pursuant to applicable laws and has been placed upon the City Council Meeting Agenda on the date set forth in the Staff Report, or to such date that the City Council may have continued or deferred consideration of this Resolution, and on such date the City Council conducted a duly noticed public hearing on the adoption of this Resolution at which hearing the City Council provided members of the public an opportunity to comment and be heard and considered any and all testimony and other evidence provided in connection with the adoption of this Resolution; and

WHEREAS, the City Council determines that adoption of this Resolution is in the public interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

Section 1. Recitals. The City Council does hereby find, determine and resolve that all of the foregoing recitals are true and correct.

Section 2. Approval and Authorizations. The City Council does further resolve, order and/or direct as follows:

- a. That the Final Map of Loden Place – Tract No. 10197 attached hereto as Exhibit A and incorporated herein by this reference (the “Map”) is hereby approved.



- b. That the Subdivision Improvement Agreement with Diamond Creek Villa, LLC for Diamond Creek Phase 2 substantially in the form attached hereto as Exhibit B and incorporated herein by this reference (the "Agreement") is hereby approved.
- c. That the City Manager is hereby delegated authority to and is authorized and directed to execute the Agreement substantially in the form attached hereto as Exhibit B.
- d. That the City Manager is hereby delegated authority to and is authorized and directed to execute a Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney substantially in the form attached hereto as Exhibit C.
- e. Authorize the recordation of the Map and Agreement.

Section 3. This Resolution shall take effect immediately upon adoption.

**PASSED AND ADOPTED** by the City Council of the City of Morgan Hill at its meeting held on this 4<sup>th</sup> day of June, 2014 by the following vote:

**AYES:**  
**NOES:**  
**ABSTAIN:**  
**ABSENT:**

**COUNCIL MEMBERS:**  
**COUNCIL MEMBERS:**  
**COUNCIL MEMBERS:**  
**COUNCIL MEMBERS:**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**Steve Tate, Mayor**

**∞ CERTIFICATION ∞**

**I, Irma Torrez, City Clerk of the City of Morgan Hill, California,** do hereby certify that the foregoing is a true and correct copy of Resolution No. \_\_\_\_\_, adopted by the City Council at the meeting held on June 4, 2014.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**Irma Torrez, CITY CLERK**



## OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF, OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN UPON THE HEREIN MAP; THAT WE ARE THE ONLY PERSONS WHOSE CONSENTS ARE NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE HEREBY CONSENT TO THE PREPARATION AND FILING OF SAID MAP AND SUBDIVISION AS SHOWN WITHIN THE DISTINCTIVE BOUNDARY LINE.

WE HEREBY DEDICATE TO PUBLIC USE AND OFFER TO DEDICATE TO THE CITY OF MORGAN HILL, AS EASEMENTS ONLY, ALL STREETS AND PORTIONS OF STREETS NOT HERETOFORE EXISTING AND DESIGNATED AS CHRISTINE LYNN DRIVE, DEL MONTE AVENUE, HALE AVENUE AND STONEY CREEK WAY, AS SHOWN UPON THIS MAP. SAID DEDICATIONS AND OFFERS OF DEDICATION ARE FOR ANY AND ALL PUBLIC USES UNDER, UPON, AND OVER SAID STREETS AND PORTIONS THEREOF.

WE HEREBY DEDICATE TO PUBLIC USE AND OFFER TO DEDICATE TO THE CITY OF MORGAN HILL EASEMENTS FOR ANY AND ALL PUBLIC SERVICE FACILITIES INCLUDING, BUT NOT LIMITED TO, SIDEWALKS, POLES, WIRES AND CONDUITS FOR ELECTRICAL, TELEPHONE, TELEVISION, GAS, STORM, SANITARY AND WATER SERVICES, AND ALL APPURTENANCES THERETO UNDER, UPON, OR OVER THE LAND DESIGNATED AS "P.S.E." (PUBLIC SERVICE EASEMENT) ON THE WITHIN MAP.

WE HEREBY RESERVE FOR THE BENEFIT OF THE ADJOINING PROPERTY OWNER, INCLUSIVE, THEIR LICENSEES, VISITORS, AND TENANTS, RIGHTS OF INGRESS-EGRESS UPON AND OVER A PORTION OF OPEN SPACE 1 (O.S. 1), WITHIN A 25 FEET WIDE STRIP OF LAND DESIGNATED AS INGRESS AND EGRESS EASEMENT (I.E.E.), ON THE WITHIN MAP. SAID LAND SHALL BE MAINTAINED BY THE HOMEOWNER'S ASSOCIATION.

WE HEREBY RESERVE FOR THE EXCLUSIVE USE OF LOT 27, INCLUSIVE, THEIR LICENSEES, VISITORS, AND OF INGRESS-EGRESS UPON AND OVER LOT 28, A STRIP OF LAND DESIGNATED AS INGRESS AND EGRESS EASEMENT (I.E.E.), ON THE WITHIN MAP.

WE HEREBY RESERVE FOR THE HOMEOWNER'S ASSOCIATION, FOR THE BENEFIT OF ALL RESIDENTIAL OWNERS IN THE 'LODEN PLACE' DEVELOPMENT, THAT PARCEL OF LAND DELINEATED AND DESIGNATED AS STONEY CREEK LANE, (PRIVATE STREET), FOR THE PURPOSE OF PRIVATE PEDESTRIAN & VEHICULAR TRAVEL/PARKING AND ALL APPURTENANCES THERETO, NO FURTHER SUBDIVISION AND OR RESIDENTIAL DEVELOPMENT OF SAID PARCEL OF LAND SHALL BE ALLOWED. SAID PARCEL OF LAND SHALL BE CONVEYED TO AND BE MAINTAINED BY THE HOMEOWNER'S ASSOCIATION.

WE HEREBY DEDICATE TO PUBLIC USE A STRIP OF LAND DELINEATED AND DESIGNATED AS EMERGENCY VEHICLE ACCESS EASEMENT (E.V.A.E.), FOR EMERGENCY ACCESS PURPOSES ONLY.

WE HEREBY RESERVE FOR THE HOMEOWNER'S ASSOCIATION FOR THE BENEFIT OF ALL RESIDENTIAL LOTS IN THE 'LODEN PLACE' DEVELOPMENT, STORM DRAINAGE EASEMENTS IN, UNDER, UPON AND ACROSS THOSE STRIPS OF LAND DELINEATED AND DESIGNATED AS "P.S.D.E." (PRIVATE STORM DRAINAGE EASEMENT), SAID EASEMENTS SHALL BE CONVEYED TO AND BE MAINTAINED BY THE HOMEOWNER'S ASSOCIATION.

WE HEREBY RESERVE FOR THE OWNER(S) OF LOTS 16, 25, 29 AND 31 UPON AND OVER THE ADJACENT LOTS, THOSE STRIPS OF LAND DELINEATED AND DESIGNATED AS "S.A.E." (SIDEYARD ACCESS EASEMENT) FOR THE PURPOSE OF ENHANCED SIDEYARD ACCESS.

WE HEREBY RESERVE FOR THE HOMEOWNER'S ASSOCIATION FOR THE BENEFIT OF ALL RESIDENTIAL LOTS IN THE 'LODEN PLACE' DEVELOPMENT, OPEN SPACE 1, OPEN SPACE 2 AND OPEN SPACE 3 (O.S. 1, O.S. 2 & O.S. 3) FOR THE PURPOSES OF LANDSCAPING AND RECREATIONAL AMENITIES AND ALL OTHER APPURTENANCES THERETO, NO FURTHER SUBDIVISION AND OR RESIDENTIAL DEVELOPMENT OF SAID PARCELS SHALL BE ALLOWED. SAID PARCELS SHALL BE CONVEYED TO AND BE MAINTAINED BY THE HOMEOWNER'S ASSOCIATION.

ALL OF THE HEREIN DESCRIBED STREETS AND EASEMENTS SHALL BE KEPT FREE OF BUILDINGS, EXCEPT LAWFUL UNSUPPORTED ROOF OVERHANGS, AND OBSTRUCTIONS THAT DO NOT IMPAIR THE USE OF, OR ARE CONSISTENT WITH THE PURPOSES OF THE STREET OR EASEMENT.

THE HEREIN DESCRIBED OFFERS OF DEDICATION TO THE CITY OF MORGAN HILL ARE TO BE ACCEPTED ONLY WHEN THE CITY COUNCIL OF THE CITY OF MORGAN HILL OR ITS SUCCESSOR AGENCY ADOPTS AND RECORDS IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY A RESOLUTION ACCEPTING SAID STREETS AND EASEMENTS. UNTIL SAID RESOLUTION(S) ARE RECORDED, ALL STREETS AND EASEMENTS ENCOMPASSED WITHIN SUCH OFFERS OF DEDICATION SHALL BE MAINTAINED BY THE DEVELOPER DURING ANY REQUIRED WARRANTY PERIOD AND THEREAFTER BY THE OWNER(S) OF THE LOTS OR PARCELS IN THE SUBDIVISION. THE CITY OF MORGAN HILL SHALL NOT BE RESPONSIBLE FOR MAINTENANCE AND SHALL INCUR NO LIABILITY WITH RESPECT TO SUCH OFFERED STREETS AND EASEMENTS OR ANY IMPROVEMENT THEREON. ALL DEDICATED RIGHTS-OF-WAY AND EASEMENTS NOT ACCEPTED FOR MAINTENANCE BY THE CITY OR OTHER PUBLIC AGENCY SHALL BE MAINTAINED BY THE OWNER(S) OF THE LOTS OR PARCELS IN THE SUBDIVISION.

AS OWNER:  
CITY VENTURES HOMEBUILDING, LLC

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

## TRACT No. 10197 "LODEN PLACE"

BEING A PORTION OF LOT 29, AS SAID LOT IS SHOWN ON THAT CERTAIN "MORGAN HILL RANCH MAP NO. 3" FILED FOR RECORD ON SEPTEMBER 21, 1892 IN BOOK "G" OF MAPS AT PAGES 20 AND 21, AND BEING A PORTION OF PARCEL 2, AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON OCTOBER 14, 1970 IN BOOK 274 OF MAPS AT PAGE 7,  
SANTA CLARA COUNTY RECORDER'S OFFICE

AND LYING WITHIN THE  
CITY OF MORGAN HILL COUNTY OF SANTA CLARA  
STATE OF CALIFORNIA  
MAY 2014

## NOTES

- 1.) THE DISTINCTIVE BOUNDARY LINE INDICATES THE BOUNDARIES OF THE LAND SUBDIVIDED BY THIS FINAL MAP.
- 2.) THE AREA WITHIN THE DISTINCTIVE BOUNDARY IS 8.265 ACRES.
- 3.) ALL DISTANCES AND DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
- 4.) A GEOTECHNICAL REPORT WAS PREPARED BY TMAKIDISSY CONSULTING, INC. ON DECEMBER 19, 2012 AND RECORDED BY SAID COMPANY AS PROJECT NO. E246-1.
- 5.) THE PROPERTY OWNER IS PROVIDING CONSTRUCTIVE NOTICE HEREON THAT EACH LOT IS SUBJECT TO REQUIREMENTS OF A DEVELOPMENT AGREEMENT, AND THAT COMMITMENTS UNDER THE AGREEMENT, WHICH THE CITY HAS PERMITTED THE PROPERTY OWNER TO DELAY, MUST BE FULFILLED BY THE SUBSEQUENT PROPERTY OWNERS/OWNER.

## ACKNOWLEDGMENT

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

ON \_\_\_\_\_ BEFORE ME,  
A NOTARY PUBLIC, PERSONALLY APPEARED \_\_\_\_\_

WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND.

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

NOTARY'S PRINCIPLE PLACE OF BUSINESS: \_\_\_\_\_

EXPIRATION OF NOTARY'S COMMISSION: \_\_\_\_\_

NOTARY'S COMMISSION NO.: \_\_\_\_\_

## PLANNING COMMISSION STATEMENT

I HEREBY STATE THAT THE TENTATIVE MAP FOR THE FINAL MAP SHOWN HEREON WAS CONDITIONALLY APPROVED ON MAY 14, 2013 BY THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL, CALIFORNIA, BY RESOLUTION NUMBER 13-23, APPLICATION NUMBER SD-11-11.

NAME: ANDREW CRABTREE  
SECRETARY OF THE PLANNING COMMISSION

DATE \_\_\_\_\_

## ENGINEER'S STATEMENT

I HEREBY STATE THAT THIS FINAL MAP AND THE FIELD SURVEY, UPON WHICH THE MAP IS BASED, WERE MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE, AT THE REQUEST OF CITY VENTURES, ON JUNE 4, 2013; THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN; THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR WILL BE SET IN SUCH POSITIONS ON OR BEFORE JUNE 30, 2015 AND THAT SUCH MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED. I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.



WILLIAM J. MCCLINTOCK, R.C.E. 24893  
EXPIRATION DATE 12/31/15

## CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP, THE SUBDIVISION AS SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, IF REQUIRED, AND ANY APPROVED ALTERATIONS THEREOF. ALL PROVISIONS OF THE SUBDIVISION MAP ACT, AS AMENDED, AND OF ANY LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP, IF REQUIRED, HAVE BEEN COMPLIED WITH.

KARL D. BJARKE - CITY ENGINEER  
CITY OF MORGAN HILL, CALIFORNIA  
R.C.E. NO. 39416 - REG. EXP. 12/31/2015



## CITY SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP AND THAT I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

JOHN K. KING - ACTING CITY SURVEYOR  
BAGOYE & KING, INC. P.L.S. NO. 6809  
LIC. EXP. 9/30/2014



## CITY CLERK'S STATEMENT

I HEREBY STATE THAT THE CITY COUNCIL OF THE CITY OF MORGAN HILL AT ITS REGULAR MEETING HELD ON \_\_\_\_\_ DULY APPROVED THE FINAL MAP SHOWN HEREON, AUTHORIZED ITS RECORDED, AND ACCEPTS ON BEHALF OF THE PUBLIC, SUBJECT TO THEIR IMPROVEMENT IN ACCORDANCE WITH CITY STANDARDS, THE STREETS AND EASEMENTS OFFERED FOR DEDICATION FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE OFFER OF DEDICATION.

IRMA TORREZ \_\_\_\_\_ DATE \_\_\_\_\_  
CITY CLERK OF THE CITY OF MORGAN HILL  
COUNTY RECORDER'S STATEMENT

FILED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_\_

AT \_\_\_\_\_ M. IN BOOK \_\_\_\_\_ OF MAPS, AT PAGES \_\_\_\_\_ AT THE REQUEST OF  
M.H. ENGINEERING CO.

FILE NO. \_\_\_\_\_

FEE \$ \_\_\_\_\_

REGINA ALCOMENDRAS, COUNTY RECORDER OF SANTA CLARA COUNTY

BY: \_\_\_\_\_  
DEPUTY

SHEET 1 OF 5

**MH engineering Co.**  
18075 Vineyard Boulevard  
Morgan Hill, CA 95037

27171

EXHIBIT A

L:\Projects\2002\27171\dwg\27171FM.dwg 5/16/2014 10:58:46 AM P01





LOT 20

"MORGAN HILL RANCH MAP NO. 3"  
BOOK "G" MAPS, PGS 20-21

LOT 21

ACACIA ASSOCIATES  
DOC. NO. 8273130PCL 2  
PARCEL MAP  
BOOK 709 MPS, PGS 46-47NORTHWIND PROPERTIES  
DOC NO. 7535823DEL MONTE AVENUE  
(BASIS OF BEARINGS)  
N34°52'00"W 660.46'

PUBLIC STREET DEDICATION (NE)

SEE DETAIL "F"  
SHEET 5

PCL 3

PCL 4  
PARCEL MAP  
BOOK 621 MPS,  
PGS 10-13CHRISTINE LYNN DRIVE  
N55°07'31"E 458.16'TRACT NO. 8791  
"DEL MONTE ESTATES"  
BOOK 736 MPS,  
PGS 8-9

SEE SHEET 4

## NOTE

SEE SHEET 2 FOR BASIS OF BEARINGS  
SEE SHEET 2 AND 4 FOR LEGEND  
AND REFERENCE RECORD DATATRACT No. 10197  
"LODEN PLACE"BEING A PORTION OF LOT 29, AS SAID LOT IS SHOWN ON THAT CERTAIN "MORGAN  
HILL RANCH MAP NO. 3" FILED FOR RECORD ON SEPTEMBER 21, 1892 IN BOOK "G"  
OF MAPS AT PAGES 20 AND 21, AND BEING A PORTION OF PARCEL 2, AS SAID  
PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON OCTOBER  
14, 1970 IN BOOK 274 OF MAPS AT PAGE 7.

SANTA CLARA COUNTY RECORDER'S OFFICE

AND LYING WITHIN THE  
CITY OF MORGAN HILL, COUNTY OF SANTA CLARA  
STATE OF CALIFORNIA

MAY 2014

SHEET 3 OF 5

MH engineering Co.

18075 Vineyard Boulevard  
Morgan Hill, CA 95037

27171

| CURVE | LENGTH | RADIUS  | DELTA     |
|-------|--------|---------|-----------|
| C1    | 7.65'  | 34.00'  | 12°53'27" |
| C2    | 4.73'  | 34.00'  | 7°58'09"  |
| C3    | 2.92'  | 34.00'  | 4°55'17"  |
| C4    | 21.52' | 34.00'  | 36°16'08" |
| C5    | 2.72'  | 46.00'  | 3°23'07"  |
| C6    | 15.47' | 46.00'  | 19°16'01" |
| C7    | 17.40' | 34.00'  | 29°19'26" |
| C8    | 30.34' | 226.00' | 7°41'28"  |
| C9    | 34.99' | 274.00' | 7°18'58"  |
| C10   | 38.48' | 24.50'  | 90°00'00" |
| C11   | 79.33' | 50.50'  | 90°00'00" |
| C12   | 32.40' | 50.50'  | 36°45'25" |
| C13   | 19.77' | 50.50'  | 22°25'39" |
| C14   | 27.16' | 50.50'  | 30°48'55" |
| C15   | 19.02' | 263.00' | 4°08'34"  |
| C16   | 64.09' | 263.00' | 13°57'45" |
| C17   | 59.83' | 250.00' | 13°42'41" |
| C18   | 7.22'  | 250.00' | 1°39'13"  |
| C19   | 67.04' | 250.00' | 15°21'54" |
| C20   | 58.90' | 37.50'  | 90°00'00" |
| C21   | 0.99'  | 368.00' | 0°09'16"  |
| C22   | 18.40' | 50.50'  | 20°52'52" |

| CURVE | LENGTH | RADIUS  | DELTA     |
|-------|--------|---------|-----------|
| C23   | 79.33' | 50.50'  | 90°00'00" |
| C24   | 58.90' | 37.50'  | 90°00'00" |
| C25   | 38.48' | 24.50'  | 90°00'00" |
| C26   | 4.55'  | 432.00' | 0°36'11"  |
| C27   | 13.18' | 432.00' | 1°44'53"  |
| C28   | 13.25' | 432.00' | 1°45'28"  |
| C29   | 13.11' | 368.00' | 2°02'26"  |
| C30   | 13.05' | 368.00' | 2°01'54"  |
| C31   | 26.16' | 368.00' | 4°04'20"  |
| C32   | 31.56' | 400.00' | 4°31'14"  |
| C33   | 36.44' | 432.00' | 4°50'01"  |
| C34   | 48.81' | 432.00' | 6°28'26"  |
| C35   | 31.41' | 20.00'  | 89°59'31" |
| C36   | 31.42' | 20.00'  | 90°00'29" |
| C37   | 15.56' | 20.00'  | 44°34'24" |

## RADIAL TABLE

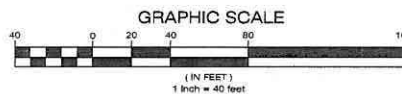
| LINE | BEARING     |
|------|-------------|
| r1   | N47°09'51"E |
| r2   | S38°37'34"W |
| r3   | S42°14'33"W |
| r4   | S23°33'10"E |
| r5   | N01°23'39"E |
| r6   | N38°15'36"W |
| r7   | S57°31'37"E |

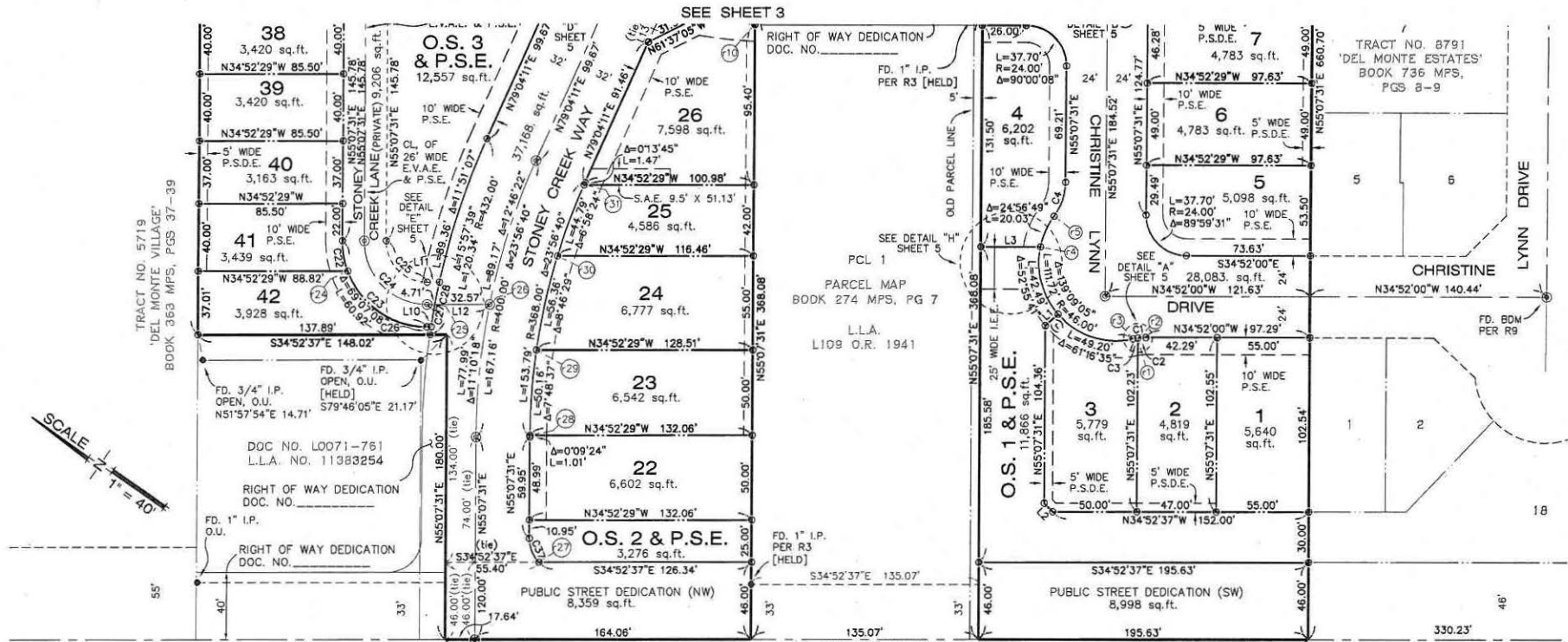
| LINE | BEARING     |
|------|-------------|
| r8   | N41°27'12"E |
| r9   | N28°47'57"E |
| r10  | S57°53'12"W |
| r11  | S62°46'50"W |
| r12  | S33°16'33"E |
| r13  | S34°43'13"E |
| r14  | S15°27'04"E |
| r15  | N69°05'16"E |

## LINE TABLE

| LINE  | LENGTH | BEARING     |
|-------|--------|-------------|
| L1(r) | 10.00' | S76°28'51"E |
| L2    | 7.07'  | N10°07'27"E |
| L3    | 35.40' | S34°52'29"E |
| L4    | 14.14' | S79°52'29"E |
| L5(r) | 15.00' | N87°58'22"W |
| L6    | 32.55' | N25°02'05"E |
| L7    | 20.63' | S06°21'37"E |
| L8    | 26.00' | N34°52'29"W |
| L9    | 50.27' | N19°30'35"W |
| L10   | 2.54'  | S34°52'29"E |
| L11   | 7.29'  | S34°52'29"E |

| LINE | BEARING     |
|------|-------------|
| r16  | S17°08'46"E |
| r17  | N15°04'52"W |
| r18  | S68°50'12"W |
| r19  | S13°02'26"E |
| r20  | N68°26'42"E |
| r21  | S59°16'05"W |
| r22  | S24°48'36"W |
| r23  | N01°52'56"E |
| r24  | N55°45'21"W |





#### LEGEND

- FOUND STANDARD CITY MONUMENT, TAGGED R.C.E. 24893 UNLESS NOTED OTHERWISE.
- FOUND 3/4" IRON PIPE, TAGGED R.C.E. 24893, UNLESS NOTED OTHERWISE.
- SET STANDARD CITY MONUMENT, TAGGED R.C.E. 24893
- SET 3/4" IRON PIPE, TAGGED R.C.E. 24893

BDM BRASS DISK MONUMENT  
 CH. CHAINS  
 CL. CENTER LINE  
 E.V.A.E. EMERGENCY VEHICLE ACCESS EASEMENT  
 I.E.E. INGRESS, EGRESS EASEMENT  
 FD. FOUND  
 O.S. OPEN SPACE  
 O.U. ORIGIN UNKNOWN  
 PR. PRORATED DIMENSION  
 P.S.D.E. PRIVATE STORM DRAINAGE EASEMENT  
 P.S.E. PUBLIC SERVICE EASEMENT  
 S.A.E. SIDEYARD ACCESS EASEMENT  
 SNF SEARCH FOR, NOT FOUND  
 ( ) RADIAL BEARING  
 [ ] HELD POINT

DISTINCTIVE BOUNDARY LINE  
 CENTERLINE  
 EASEMENT LINE  
 PROPERTY LINE  
 RIGHT-OF-WAY LINE

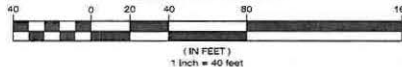
#### REFERENCE RECORD DATA

- R1 MORGAN HILL RANCH MAP NO. 3 BOOK "G" MAPS, PGS 20-21
- R2 TRACT MAP NO. 5996 BOOK 389 MAPS, PG 2
- R3 PARCEL MAP BOOK 274 MAPS, PG 7
- R4 TRACT MAP NO. 5719 BOOK 363 MAPS, PGS 37-39
- R5 PARCEL MAP BOOK 621 MAPS, PGS 10-13
- R6 TRACT MAP NO. 9384 BOOK 753 MAPS, PGS 3-6
- R7 TRACT MAP NO. 8192 BOOK 597 MAPS, PGS 41-43
- R8 TRACT MAP NO. 7533 BOOK 524 MAPS, PGS 19-20
- R9 TRACT MAP NO. 8791 BOOK 736 MAPS, PGS 8-9

#### NOTE

SEE SHEET 2 FOR BASIS OF BEARINGS  
 SEE SHEET 3 FOR LINE, CURVE AND RADIAL DATA

#### GRAPHIC SCALE



## TRACT No. 10197 "LODEN PLACE"

BEING A PORTION OF LOT 29, AS SAID LOT IS SHOWN ON THAT CERTAIN "MORGAN HILL RANCH MAP NO. 3" FILED FOR RECORD ON SEPTEMBER 21, 1892 IN BOOK "G" OF MAPS AT PAGES 20 AND 21, AND BEING A PORTION OF PARCEL 2, AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON OCTOBER 14, 1970 IN BOOK 274 OF MAPS AT PAGE 7, SANTA CLARA COUNTY RECORDER'S OFFICE

AND LYING WITHIN THE  
 CITY OF MORGAN HILL COUNTY OF SANTA CLARA  
 STATE OF CALIFORNIA

MAY 2014

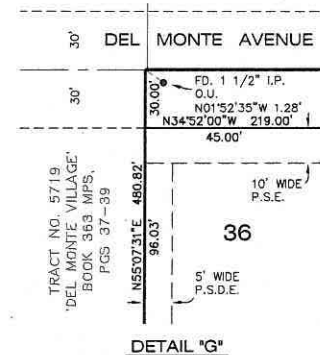
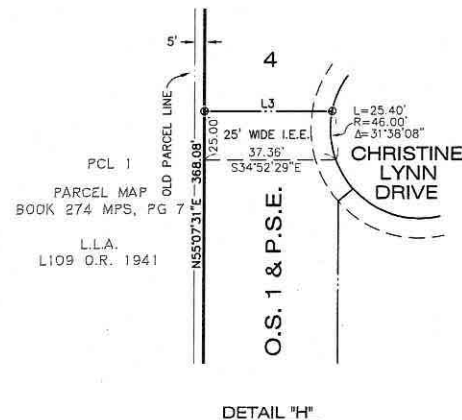
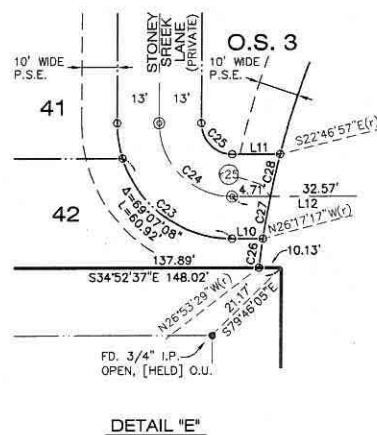
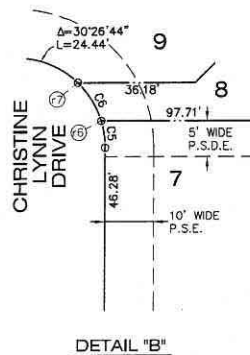
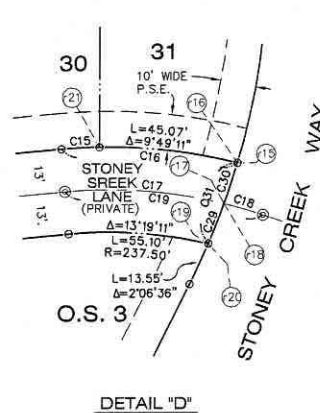
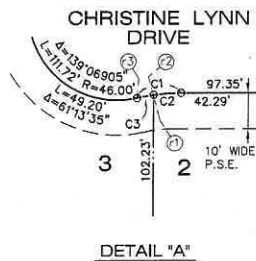
SHEET 4 OF 5

**MH engineering Co.**

16075 Vineyard Boulevard  
 Morgan Hill, CA 95037

27171





## TRACT No. 10197 "LODEN PLACE"

BEING A PORTION OF LOT 29, AS SAID LOT IS SHOWN ON THAT CERTAIN "MORGAN HILL RANCH MAP NO. 3" FILED FOR RECORD ON SEPTEMBER 21, 1892 IN BOOK "G" OF MAPS AT PAGES 20 AND 21, AND BEING A PORTION OF PARCEL 2, AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON OCTOBER 14, 1970 IN BOOK 274 OF MAPS AT PAGE 7.

SANTA CLARA COUNTY RECORDER'S OFFICE  
AND LYING WITHIN THE  
CITY OF MORGAN HILL COUNTY OF SANTA CLARA  
STATE OF CALIFORNIA

MAY 2014

SHEET 5 OF 5

**MH engineering Co.**  
16075 Vineyard Boulevard  
Morgan Hill, CA 95037

27171

### NOTE

SEE SHEET 2 FOR BASIS OF BEARINGS.  
SEE SHEET 2 AND 4 FOR LEGEND, REFERENCE RECORD DATA.  
SEE SHEET 3 FOR LINE, CURVE AND RADIAL DATA.

EXHIBIT B

RECORDING REQUESTED BY  
WHEN RECORDED RETURN TO

CITY OF MORGAN HILL  
City Clerk's Office  
17575 PEAK AVENUE  
MORGAN HILL, CA 95037

(RECORD AT NO FEE PURSUANT TO  
GOVERNMENT CODE SECTION 27383)

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

**SUBDIVISION IMPROVEMENTS AGREEMENT**

**CITY VENTURES HOMEBUILDING, LLC**

**LODEN PLACE – TRACT NO. 10197**

This Subdivision Improvements Agreement ("Agreement") between the City of Morgan Hill, a municipal corporation ("City"), and **CITY VENTURES HOMEBUILDING, LLC**, a Limited Liability Company ("Subdivider"), is entered into this \_\_\_\_ day of \_\_\_\_\_, 2014. City and Subdivider hereby acknowledge the following:

1. Subdivider has filed a Tentative Subdivision Map and supporting documents for **TRACT NO. 10197**, the subdivision known as **LODEN PLACE** ("Map").
2. City desires, as part of the conditions of approval ("Conditions") of the Final Tract Map or Parcel Map ("Final Map"), that certain improvements be installed by Subdivider ("Improvements") as shown on the City Engineer approved and signed Subdivision Improvement Plans entitled "**Improvement Plans for Loden Place, Tract No. 10197**" ("Plans").
3. Subdivider has been unable to complete, prior to filing of the Final Map, all of the improvements required by City to the satisfaction of the City Engineer.
4. Subdivider is required by the terms of the Morgan Hill Municipal Code ("Municipal Code"), to improve all streets, highways, or public areas which are part of the development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer and to post certain securities to secure the completion of the Improvements.
5. To assure City that Subdivider will construct, install and complete all Improvements required for the Subdivision, the parties have entered into this Agreement.



6. This Agreement is executed pursuant to California Government Code 66410, et seq., and Chapter 17.32 of the Municipal Code in order to provide for the manner in which Improvements shall be constructed and completed.

**NOW, THEREFORE,** and in consideration of the approval of the Map, and in order to ensure satisfactory performance by Subdivider of Subdivider's obligations under the Conditions, the Subdivision Map Act, and applicable ordinances of the City, the parties hereto, for themselves, their successors, and assigns, hereby agree as follows:

### **Section 1. Incorporation by Reference**

The Development Agreement between Subdivider and City, if applicable, Subdivider's Map application, the Conditions, the Map, all Plans as referenced in Section 2 below and all items submitted to the Planning Department, Planning Commission and City Council, all are incorporated herein by reference. In the event of any inconsistency between their representations in any incorporated documents and this Agreement, this Agreement shall govern.

### **Section 2. Construction of Improvements**

(a) Subdivider shall construct to the approval of the City, and as provided for in the Conditions, the Improvements as shown fully executed in the Plans entitled "**Improvement Plans for Loden Place, Tract No. 10197**".

(b) Acquire and dedicate, or pay the cost of acquisition by the City, of all rights-of-way, easements, and other interests in real property for the construction or installation of the Improvements, free and clear of all liens and encumbrances.

(c) Survey Monumentation:

(1) Subdivider shall place survey monumentation as described on the Map.

(2) Subdivider shall replace or repair all survey monumentation that is destroyed or damaged as a result of Subdivider's activities. Any such repair or replacement shall be to the satisfaction and subject to the approval of the City.

### **Section 3. Modification of Plans**

Subdivider agrees that, if during the construction of the Improvements, it is determined by the City that revisions to the Plans are necessary in the interest of the public, Subdivider will undertake such design and construction changes required by the City. Said changes, if any, shall be confined to the premises owned by Subdivider.

### **Section 4. Security**

(a) Pursuant to California Government Code 66499.3(a), and the Municipal Code, Subdivider shall, concurrently with the execution hereof, furnish a surety bond in an amount equal to at

least one hundred percent (100%) of the estimated construction cost of the Improvements as security guaranteeing the faithful performance of the Improvements and this Agreement ("Performance Bond").

Improvements and the City Engineer's Estimated Costs of Improvements as of May 2014 are attached hereto as Exhibit "A".

The Performance Bond shall be in a form substantially the same as Exhibit "B".

(b) Pursuant to California Government Code 66499.3(b), Subdivider shall, concurrently with the execution hereof, furnish a surety bond in an amount equal to one hundred percent (100%) of the estimated construction cost of the Improvements (as listed in Section 4(a) above) as security guaranteeing the payment to the contractors, subcontractors and persons furnishing labor, materials, or equipment in connection with this Agreement ("Labor and Materials Bond"). The Labor and Materials Bond shall be in a form substantially the same as Exhibit "C".

(c) Subdivider shall, upon acceptance of the Improvements by the City Council of the City, furnish a surety bond in an amount equal to fifty percent (50%) of the estimated construction cost of the Improvements (as listed in Section 4(a) above) to secure the guarantee and warranty of the work for a period of one year following the completion and acceptance thereof against any defective work or labor performed, or defective materials furnished by the Subdivider.

(d) Pursuant to Government Code 66499.9, any liability upon the security given for faithful performance of any act or agreement shall be limited to:

(1) The performance of the work covered by the Agreement or the performance of the required act.

(2) The performance of any changes or alterations in such work provided that all changes or alterations do not exceed ten percent of the original estimated cost of the Improvements.

(3) The guarantee and warranty of the work for a period of one year following completion and acceptance thereof against any defective work or labor done or defective materials furnished in the performance of the Agreement or the performance of the act.

(4) Costs and reasonable expenses and fees, including reasonable attorneys' fees.

(e) The surety on each bond and the form thereof shall be satisfactory to the City. The surety shall be furnished by a surety company authorized to write the same in the State of California and that is approved and accepted by the City's risk manager.

(f) Subdivider agrees to furnish any bonds required by the State or County for Improvements outside the City's jurisdiction.

(g) The release of any securities shall be governed by the provisions of Government Code Section 66499.7.



## **Section 5. Inspections**

At least fifteen (15) calendar days prior to the commencement of any work hereunder, Subdivider shall notify the City in writing of the fixed start date of construction so that the City shall be able to provide inspection services. Subdivider shall at all times maintain proper facilities and provide safe access to all parts of the work site(s) for City inspections, including any workshops or plants where work related to the Improvements is being conducted.

Subdivider shall pay and reimburse City for all expenses incurred by City for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. City Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.

## **Section 6. Timing of Performance**

Subdivider agrees to perform and complete all Improvements within eighteen (18) months from the date of the recording of the Final Map; provided however, the City Manager may extend the deadline for completion by not more than six (6) months at his reasonable discretion and determination that granting the extension will not be detrimental to the public welfare. No extension of this deadline for completion shall be made except upon the basis of a written application made by the Subdivider stating fully the ground for the application and the facts relied upon for an extension.

It is further agreed by and between the Subdivider and the City that any extension granted shall in no way affect the validity of this Agreement or release the surety (ies) on any bond attached hereto or the financial institution guaranteeing the same. Subdivider further agrees to maintain the securities described in Section 4 above in full force and effect during the terms of this Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by the City

## **Section 7. Work Performance and Warranty**

(a) Subdivider shall construct, at Subdivider's own expense, all of the Improvements in a good and workmanlike manner, and furnish all required materials incident thereto, in accordance with the Plans and to the satisfaction of the City, including any changes required by the City which in the City's opinion are necessary to complete the Improvements.

(b) All work shall be conducted and completed in accordance with the Plans and federal, state, Municipal Code, laws, ordinances, and regulations. For any Improvements partially completed prior to this Agreement, Subdivider agrees to complete the Improvements in accordance with this Agreement.

(c) Neither Subdivider, nor any of Subdivider's agents or contractors in connection with Subdivider's obligations under this Agreement are, or shall be considered to be, employees or agents of City.

(d) The work performance for the Improvements shall not be deemed complete until such time as such Improvements have been accepted for maintenance by the City.

(e) Subdivider warrants that: (1) it has investigated the work to be performed under this agreement, (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should Subdivider discover any conditions materially differing from those inherent in the Improvements or work or as represented by the City, it shall immediately inform City and shall not proceed, except at Subdivider's risk, until written instructions are received from City.

(f) Subdivider guarantees and warrants the work required by this Agreement and agrees to remedy any defects in the Improvements or work arising from faulty or defective materials or construction occurring within twelve (12) months after its acceptance. Following notice, Subdivider shall, without delay or cost to City, repair, replace, or construct any defective or unsatisfactory portion of the Improvements. City may, at its sole option, perform the repair or replacement itself if Subdivider or its surety has failed to commence repair within twenty (20) days after City has mailed written notice to Subdivider. In such event, Subdivider or its surety agrees to pay the cost of repair and replacement to the City, plus fifteen percent; and the City may recover such costs as a lien against the Subdivision. City may proceed immediately to make repairs should an emergency arises.

#### **Section 8. Acquisition and Dedication of Easements or Rights-of-Way**

(a) No construction or installation of the Improvements shall be commenced before:

(1) The offer of dedication to City of appropriate rights-of-way, easements, or other interests in real property for the Improvements, which offer of dedication shall be irrevocable and remain open pursuant to California Government Code Section 66477.2, and authorization from the property owner to allow construction or installation of Improvements, or

(2) The dedication to, and acceptance by, City of appropriate rights-of-way, easements, or other interests in real property, as determined by the City Engineer, or

(3) The issuance by a court of competent jurisdiction pursuant to state Eminent Domain Law of an order of possession.

(b) Except as otherwise provided by this Agreement, City rejects all lands, rights-of-way, and easements offered for dedication on the Final Map of the Subdivision. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with Government Code Section 66477.2. All such offers may be accepted by City in its sole discretion at any later date without further notice to Subdivider as provided by law. By way of explanation only, it is the current intention of City to accept all or part of the irrevocable offers to dedicate upon acceptance of the Improvements called for in this Agreement.

(c) Nothing in this Section 8 shall be construed as authorizing or granting an extension of time to Subdivider.

#### **Section 9. Indemnity and Insurance**

(a) Subdivider hereby agrees to save harmless and indemnify, including, without limitation, City's defense costs (including reasonable attorney's fees), from and against any and all suits, actions, or

claims, of any character whatever, brought for, or on account of any injuries or damages sustained by any person or property resulting or arising, or alleged to have resulted or arisen, from Subdivider or Subdivider's contractors, subcontractors, agents, or employees activities, omissions or operations pursuant to this Agreement. Should City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, Subdivider will defend City, (at City's request and with counsel satisfactory to City) and will indemnify City for any judgment rendered against it or any sums paid out in settlement or otherwise.

Subdivider shall defend, indemnify, and hold harmless the City and its elective and appointive boards, officials, officers, agents, employees and volunteers from any claim, action, or proceeding to review, set aside, void, or annul an approval of the City concerning the Map and acts made in respect thereof, provided any such action is brought within the time period provided for in California Government Code 66499.37.

City shall promptly notify the Subdivider of any claim, action, or proceeding, and cooperate fully in the defense of any claim, action, or proceeding.

It is expressly understood and agreed that this Subsection (a) will survive termination of this Agreement.

(b) Subdivider is required to obtain and provide City-approved insurance currently with the execution hereof. All insurance required by this Agreement shall be carried only by responsible insurance companies licensed to do business in California and shall name by endorsement City, its elected officials, officers, employees, agents and representatives, as an additional insured. All policies shall contain language to the effect that: (1) the insurer waives the right of subrogation against City and City's elected officials, officers, employees, agents, and representatives; (2) insurance shall be primary noncontributing and any other insurance carried by the City shall be excess over such insurance, and (3) policies shall provide that it shall not be cancelled or materially changed except after thirty (30) days' notice by the insurer to City by certified mail. Subdivider shall furnish City with copies of all such policies or certificates promptly upon receipt. Submittal of the appropriate insurance is a requirement prior to the City Council's consideration of the Subdivision Final Map. It is the responsibility of Subdivider to verify that all agents, including general and sub-contractors working on the project, have the minimum insurance coverages required by City. Any work performed within the City's right-of-way requires an encroachment permit. Prior to acquiring a permit, the applicant will be required to furnish proof of insurance coverage.

(1) Subdivider and all subcontractors shall maintain Worker's Compensation Insurance, if applicable.

(2) Subdivider shall maintain comprehensive, broad form, general public liability and automobile insurance against claims and liabilities for personal injury, death, or property damage, providing protection of at least \$1,000,000 for bodily injury or death to any one person for any one accident or occurrence and at least \$1,000,000 for property damage.

(3) Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.



(4) The obligations of Subdivider set forth in this Subsection (b) may be performed by the Subdivider's general contractor for the project which is the subject matter of this Agreement. Subdivider agrees and warrants that should contractor fail to perform such obligations to City requirements, Subdivider shall immediately, and without cessation of insurance coverage or diminution of insurance coverage levels, provide substitute insurance in accordance with the requirements of this paragraph and the City. These obligations are non-assignable other than to the general contractor. This clause shall not create any third-party beneficiary rights under this Agreement on behalf of contractor, or any other third-party.

#### **Section 10. Permits and Requisite Fees**

(a) Subdivider shall pay all current fee obligations in the total amount of **\$2,136,251** due under City Resolution No. 6326, as amended, in accordance with the Department of Public Work fee schedule, as follows:

(1) **\$ 429,311** payable at the time of recording of the Final Map, and

(2) **\$ 1,706,940** payable on a pro-rata basis for each individual lot in the Subdivision prior to final inspection of each and every residence.

(3) All fees payable pursuant to this Subsection (a) constitutes valid and due consideration for the City's approval of the final Map, and amounts set forth are estimates that are subject to change prior to the issuance of building permit(s), subject to resolution or ordinance of the City Council of the City.

(b) Subdivider shall, at its expense, obtain all necessary permits and licenses for the construction of the Improvements, give all necessary notices, and pay all fees and taxes required by law.

(c) Subdivider shall obtain a City of Morgan Hill Business License.

(d) Subdivider agrees to procure, at its expense, any necessary permits for Improvements outside the City's jurisdiction.

#### **Section 11. On-Site Supervision**

Subdivider shall designate an on-site supervisor, satisfactory to the City, who shall be on the work site(s) at all times during the construction of the Improvements, and who has the authority to act on behalf of the Subdivider when communicating with City personnel.

#### **Section 12. Waiver**

Waiver by City or Subdivider of any breach of any of the provisions of the Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of the same or any other provision of this Agreement. Acceptance by City of any work by Subdivider shall not be a waiver of any of the provisions of this Agreement.

**Section 13. Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed addresses. These addresses shall be used for delivery of service of process. Notices shall be

effective five (5) days after date of mailing, or upon date of personal delivery.

- |   |  |
|---|--|
| a. Address of Subdivider is as follows:<br>City Ventures Homebuilding, LLC<br>c/o Phil Kerr<br>444 Spear Street, Suite 105<br>San Francisco, CA 94105 | With a copy to:<br>City Ventures<br>c/o Herb Gardner<br>1900 Quail Street<br>Newport Beach, CA 92660   |
| b. Address of City is as follows:<br><br>Public Works Director<br>City of Morgan Hill<br>17575 Peak Avenue<br>Morgan Hill, CA 95037                   | With a copy to:<br><br>City Clerk<br>City of Morgan Hill<br>17575 Peak Avenue<br>Morgan Hill, CA 95037 |

#### **Section 14. Noncompliance**

If City determines that Subdivider is in violation of any federal, state, County or City laws, ordinances, rules, regulations, and requirements, and/or the terms and provisions of this Agreement, it may issue a cease and desist order, stop work order, or other action the City deems necessary.

#### **Section 15. Notice of Breach and/or Default**

The City may serve written notice upon Subdivider and surety of breach of this Agreement or of any portion thereof, and default of Subdivider for any of the following circumstances:

- (a) Subdivider refuses or fails to complete the Improvements as required in Section 6 above.
- (b) Subdivider refuses or fails to perform or cure any defects in the Improvements as required in Section 7.
- (c) Subdivider is insolvent, is subject to a receivership, or files any petition in bankruptcy, either voluntary or involuntary which Subdivider fails to discharge within thirty (30) days.
- (d) The commencement of a foreclosure action against the Subdivision or any portion thereof, or any conveyance in lieu of or in avoidance of foreclosure.
- (e) Subdivider or any of Subdivider's contractors, subcontractors, agent, or employees materially violates any of the provisions of this Agreement and not cure the violation within a reasonable time.

#### **Section 16. Performance by Surety or City**

- (a) In the event of a material breach and/or default by Subdivider, Subdivider's surety shall have the duty to take over and complete the Improvements.
- (b) If the surety, within a reasonable time after receiving notice of Subdivider's default does not provide City written notice to take over the performance of this Agreement or if the surety does not

commence performance thereof within the time specified in such notice to City, City may take over the construction of the Improvements and prosecute the same to completion, by contract or by any method City may deem advisable, on behalf and at the expense of Subdivider, and Subdivider's surety shall be liable to City for any excess cost or damages incurred by City thereby. In such event, City, without liability for so doing, may take possession of and utilize to complete the Improvements such materials, appliances, and other property belonging to Subdivider as may be on the work site(s) and necessary therefore.

(c) City shall have the right to draw upon or utilize the appropriate security provided for in Section 4 to recover costs and damages to the City damages. The right of the City to draw upon or utilize the security is additional and not in lieu of any other remedy available to the City at law or in equity. The parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of Improvements, and therefore, City damages for Subdivider's default shall be measured by the cost of completing the required Improvements.

(d) Failure of Subdivider to comply with terms of this Agreement shall constitute consent to filing by City of a notice of violation against all lots in the Subdivision, or to rescind the approval or otherwise revert the Subdivision to acreage. The remedies provided in this Subsection (d) is in addition to and not in lieu of other remedies available to the City.

(e) In the event that Subdivider fails to perform any obligation under this Agreement, Subdivider agrees to pay all costs and expenses incurred by the City in securing performance of such obligation, including the costs of suit and reasonable attorney's fees.

(f) The failure by the City to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or subsequent default or breach.

#### **Section 17. Successors in Interest**

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the final map of the Subdivision and shall constitute a covenant running with the land and an equitable servitude upon the real property within the Subdivision. It shall be the responsibility of City to cause the executed Agreement to be recorded.

#### **Section 18. Effective Date**

This Agreement shall be effective as of the date and year first above written.

#### **Section 19. Amendment of Agreement**

This Agreement may only be amended by mutual consent of the original parties or their successors in interest, provided that any such amendment is executed in writing by the parties to be bound thereby. Copies of any such amendments shall be sent to surety(ies).



## **Section 20. Execution**

By signing this Agreement, the person signing states that he or she is authorized to enter into contracts on behalf of Subdivider. The undersigned, on behalf of Subdivider, binds Subdivider, its partners, successors, executors, administrators, and assigns with respect to the terms and conditions of this Agreement.

## **Section 21. Non-Liability of Officials and Employees of the City.**

No official or employee of City shall be personally liable for any default or liability under this Agreement.

## **Section 22. Law to Govern: Venue**

The law of the State of California shall govern this Agreement. In the event of litigation between the parties, the action must be filed in the Santa Clara County Superior Court.

## **Section 23. Limitations Upon Subcontracting and Assignment.**

Neither this Agreement or any portion shall be assigned by Subdivider without prior written consent of City.

## **Section 24. Miscellaneous**

(a) Compliance with Law: Subdivider shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

(b) Non-Discrimination. Subdivider covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, ancestry, or sexual orientation in any activity pursuant to this Agreement.

(c) Conflict of Interest and Reporting. Subdivider shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

(d) Time of Essence. Time is of the essence in the performance of this Agreement.

(e) Interpretation. This Agreement shall be interpreted as though prepared by both parties.

(f) Preservation of Agreement. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

**IN WITNESS THEREOF**, these parties have executed this Agreement on the day and year shown below.

[TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS: (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.]

**CITY OF MORGAN HILL**

By:

\_\_\_\_\_  
Steve Rymer, City Manager

Date: \_\_\_\_\_

**ATTEST:**

By:

\_\_\_\_\_  
Michelle Wilson, Deputy City Clerk

Date: \_\_\_\_\_

**"Subdivider"**

**CITY VENTURES HOMEBUILDING, LLC**

By:

\_\_\_\_\_  
Print Name: *President, Phil Kerr*

Date:

*5/20/14*  
\_\_\_\_\_  
(If a Corporation must be)  
Chairperson of the Board,  
President, or Vice President

By:

\_\_\_\_\_  
Print Name:

Date:

\_\_\_\_\_  
(If a Corporation must be) Secretary,  
Assistant Secretary, Chief Financial Officer  
or Assistant Treasurer

**APPROVED AS TO FORM:**

By:

\_\_\_\_\_  
Renee Gurza, City Attorney

Date: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**  
**CIVIL CODE § 1189**

State of California

County of San Francisco

On May 20, 2014  
Date

before me,

Jason Bernstein, Notary

Here Insert Name and Title of the Officer

personally appeared

Phillip Kerr

Name(s) of Signer(s)



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

Signature of Notary Public

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- ☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- ☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



**EXHIBIT A**  
**IMPROVEMENTS AND**  
**ESTIMATED COSTS OF IMPROVEMENTS**  
**AS OF MAY 2014**

**Engineers Cost Estimate**

**Loden Place**

| <b><u>Item</u></b>                        | <b><u>Description</u></b>                                    | <b><u>Quantity</u></b> | <b><u>Unit</u></b> | <b><u>Unit Price</u></b> | <b><u>Total</u></b> |
|---|--|------------------------|--------------------|--------------------------|---------------------|
| <b>Schedule I - Streets and Earthwork</b> |  |                        |                    |                          |                     |
| 1   | Clearing and grubbing (incl. curb, gutter & sidewalk demo. ) | 1                      | LS                 | \$ 10,000.00             | \$ 10,000           |
| 2   | Demo existing street barricade                               | 1                      | LS                 | \$ 800.00                | \$ 800              |
| 4   | Demo existing water service                                  | 1                      | EA                 | \$ 500.00                | \$ 500              |
| 5   | Demo existing D.I. and 12 rcp storm drain                    | 1                      | SF                 | \$ 1,500.00              | \$ 1,500            |
| 8   | Street finish grading R/W to R/W                             | 108,892                | SF                 | \$ 0.15                  | \$ 16,334           |
| 10  | AC pavement (4" AC on 12" agg. base)                         | 28,341                 | SF                 | \$ 3.50                  | \$ 99,194           |
| 11  | AC pavement (4.5" AC on 14" agg. base)                       | 61,689                 | SF                 | \$ 4.00                  | \$ 246,756          |
| 12  | Grind & overlay existing AC pavement                         | 7,430                  | SF                 | \$ 2.00                  | \$ 14,860           |
| 13  | Grade adjustment on existing sanitary sewer manhole          | 1                      | EA                 | \$ 800.00                | \$ 800              |
| 13  | City std. sidewalk (incl. driveway approaches)               | 17,735                 | SF                 | \$ 6.00                  | \$ 106,410          |
| 15  | City std. curb & gutter on agg. base                         | 3,380                  | LF                 | \$ 22.00                 | \$ 74,360           |
| 17  | City std. electroliers                                       | 15                     | LS                 | \$ 3,500.00              | \$ 52,500           |
| 18  | Undergrounding Overhead Utility                              | 376                    | LF                 | \$ 320.00                | \$ 120,320          |
| <b>Total</b>                              |  |                        |                    |                          | <b>\$ 744,333</b>   |
| <b>Schedule II - Water</b>                |  |                        |                    |                          |                     |
| 1   | 8" D.I.P. water main incl fittings and valves                | 1,800                  | LF                 | \$ 58.00                 | \$ 104,400          |
| 2   | Fire hydrant assembly  | 3                      | EA                 | \$ 3,600.00              | \$ 10,800           |
| 3   | Ex. fire hydrant assembly relocation                         | 1                      | EA                 | \$ 1,200.00              | \$ 1,200            |
| 4   | 1" copper city std. single water service                     | 42                     | EA                 | \$ 1,250.00              | \$ 52,500           |
| <b>Total</b>                              |  |                        |                    |                          | <b>\$ 168,900</b>   |
| <b>Schedule III - Sanitary Sewer</b>      |  |                        |                    |                          |                     |
| 1   | 8" PVC (SDR26)   | 2,283                  | LF                 | \$ 45.00                 | \$ 102,735          |
| 2   | City std. sewer manhole                                      | 13                     | EA                 | \$ 4,000.00              | \$ 52,000           |
| 3   | City std. sewer cleanout                                     | 5                      | EA                 | \$ 1,000.00              | \$ 5,000            |
| 4   | 4" PVC sewer laterals (stubbed beyond 10' P.S.E.)            | 42                     | EA                 | \$ 1,800.00              | \$ 75,600           |
| <b>Total</b>                              |  |                        |                    |                          | <b>\$ 235,335</b>   |

|                              |                         |       |    |                       |
|------------------------------|-------------------------|-------|----|-----------------------|
| Schedule IV - Storm Drainage |                         |       |    |                       |
| 1                            | 24" RCP storm drain     | 1,442 | LF | \$ 65.00 \$ 93,730    |
| 2                            | 15" RCP storm drain     | 238   | LF | \$ 55.00 \$ 13,090    |
| 6                            | City std. storm manhole | 9     | EA | \$ 3,600.00 \$ 32,400 |
| 7                            | City std. curb inlet    | 12    | EA | \$ 2,500.00 \$ 30,000 |
| <b>Total</b>                 |                         |       |    |                       |
| <b>Schedule IV</b>           |                         |       |    | <b>\$ 169,220</b>     |
| <b>Total Sch. I -</b>        |                         |       |    |                       |
| <b>IV</b>                    |                         |       |    | <b>\$ 1,317,788</b>   |
| <b>10%</b>                   |                         |       |    |                       |
| <b>Contingency</b>           |                         |       |    | <b>\$ 131,779</b>     |
| <b>Total</b>                 |                         |       |    | <b>\$ 1,449,567</b>   |

**Out of Tract Improvements - Hale Ave & Stoney Creek Way**

| Item | Description                                 | Quantity | Unit | Unit Price  | Total     |
|------|---|----------|------|-------------|-----------|
| 1    | Clearing and grubbing                       | 1        | LS   | \$5,000.00  | \$5,000   |
| 2    | AC pavement demolition                      | 3,866    | SF   | \$5.00      | \$19,330  |
| 3    | Street grading                              | 28,031   | SF   | \$1.00      | \$28,031  |
| 4    | 4.5" AC ON 14" AB street pavement           | 9,368    | SF   | \$5.00      | \$46,840  |
| 5    | City std. curb and gutter                   | 866      | LF   | \$22.00     | \$19,052  |
| 6    | Sidewalk incl. driveway approaches          | 4,831    | SF   | \$6.00      | \$28,986  |
| 7    | Grind & overlay AC pavement                 | 19,434   | SF   | \$2.00      | \$38,868  |
| 8    | Min. 1' sawcut existing pavement at conform | 1,059    | LF   | \$1.50      | \$1,589   |
| 9    | Remove and replace ex. barbed wire fence    | 330      | LF   | \$60.00     | \$19,800  |
| 10   | Demo existing street barricade              | 1        | LS   | \$500.00    | \$500     |
| 11   | Remove and replace existing water service   | 1        | EA   | \$2,000.00  | \$2,000   |
| 12   | Existing fire hydrant relocation            | 1        | EA   | \$1,200.00  | \$1,200   |
| 13   | Grade adjustment on existing sewer manholes | 4        | EA   | \$700.00    | \$2,800   |
| 14   | Demo existing culverts                      | 5        | EA   | \$500.00    | \$2,500   |
| 15   | Storm drain manhole                         | 1        | EA   | \$4,000.00  | \$4,000   |
| 16   | 24" RCP (incl. trench restoration)          | 203      | LF   | \$90.00     | \$18,270  |
| 17   | 15" RCP (incl. trench restoration)          | 58       | LF   | \$75.00     | \$4,350   |
| 18   | City std. curb inlet                        | 1        | EA   | \$3,200.00  | \$3,200   |
| 19   | Ex. joint pole relocation                   | 5        | EA   | \$5,000.00  | \$25,000  |
| 20   | Ex. sign relocation                         | 2        | EA   | \$300.00    | \$600     |
| 21   | City std. electroliers                      | 6        | EA   | \$3,500.00  | \$21,000  |
| 22   | Undergrounding Overhead Utility             | 1,003    | LF   | \$320.00    | \$320,960 |
|      |   |          |      | Subtotal    | \$613,876 |
|      |   |          |      | 10%         |           |
|      |   |          |      | Contingency | \$61,388  |
|      |   |          |      | Total       | \$675,263 |

**Total Est.  
Const. Cost \$ 2,124,830**

**EXHIBIT B**  
**PERFORMANCE BOND**  
**(100% of Engineer's Estimate)**

Bond No.: \_\_\_\_\_

Premium: \_\_\_\_\_

Whereas, The City Council of the City of Morgan Hill, State of California, and **City Ventures Homebuilding, LLC** ( hereinafter designated as "principal") have entered into a Subdivision Improvement Agreement:

**City Ventures Homebuilding, LLC**  
**Loden Place – Tract No. 10197**

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated \_\_\_\_\_, 2014, and identified as **Loden Place – Tract No. 10197**, is hereby referred to and made a part hereof; and

Whereas, Said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, we, the principal and \_\_\_\_\_, as surety, are held and firmly bound unto the City of Morgan Hill hereinafter called ("City"), in the penal two million, one hundred twenty-four thousand, eight hundred thirty dollars (\$2,124,830) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The Surety's office is located at \_\_\_\_\_,

Telephone No. \_\_\_\_\_; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone number are as follows:

License No.: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

The non-resident agent for the Surety, if any, is a party to the transaction:

Name of non-resident agent: \_\_\_\_\_

Non-resident agent's office address: \_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_  
\_\_\_\_\_

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Principal

By:

\_\_\_\_\_  
Surety

By:

\_\_\_\_\_  
Attorney-in Fact



By:

\_\_\_\_\_  
California Resident Agent

By:

\_\_\_\_\_  
Non-resident Agent - Attorney-in-Fact

APPROVED AS TO BONDING COMPANY:

\_\_\_\_\_  
Karl Bjarke, Public Works Director

Date:

\_\_\_\_\_

APPROVED AS TO FORM:

By:

\_\_\_\_\_  
Renee Gurza, City Attorney

Date:

\_\_\_\_\_

(Acknowledgment on following page.)

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California  
County of Santa Clara }ss.

On \_\_\_\_\_ 2014, before me, \_\_\_\_\_ a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California  
County of Santa Clara }ss.

On \_\_\_\_\_ 2014, before me, \_\_\_\_\_ a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Performance Bond Page 4 of 4

**EXHIBIT C**  
**LABOR AND MATERIAL BOND**  
**(100% of Engineer's Estimate)**

Bond No.: \_\_\_\_\_

Premium: \_\_\_\_\_

Whereas, the City Council of the City of Morgan Hill, State of California, and **City Ventures Homebuilding, LLC** (hereinafter designated as "the principal") have entered into a Subdivision Improvement Agreement:

**City Ventures Homebuilding, LLC**  
**Loden Place – Tract No. 10197**

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated \_\_\_\_\_, 2014, and identified as **Loden Place – Tract No. 10197**, is hereby referred to and made a part hereof; and

Whereas, under the terms of the agreement, the principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Morgan Hill to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

Now, therefore, the principal and the undersigned as corporate surety, and their successors and assigns are held firmly bound unto the City of Morgan Hill and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the agreement and referred to in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code in the sum of two million, one hundred twenty-four thousand, eight hundred thirty dollars (\$2,124,830), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City of Morgan Hill in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The Surety's office is located at \_\_\_\_\_,

Telephone No. \_\_\_\_\_; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone number as follows:

License No.:

Address:

Telephone No.:

The following non-resident agent, if any, for the Surety is a party to the transaction:

Name of non-resident agent: \_\_\_\_\_,

Non-resident agent's office address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Principal

By:

\_\_\_\_\_  
Surety



By:

\_\_\_\_\_  
Attorney-in Fact

By:

\_\_\_\_\_  
California Resident Agent

By:

\_\_\_\_\_  
Non-resident Agent - Attorney-in-Fact

APPROVED AS TO BONDING COMPANY:

\_\_\_\_\_  
Karl Bjarke, Public Works Director

Date:

APPROVED AS TO FORM:

By:

\_\_\_\_\_  
Renee Gurza, City Attorney

Date:

(Acknowledgment on following page.)

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California  
County of Santa Clara }ss.

On \_\_\_\_\_ 2014, before me, \_\_\_\_\_ a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California  
County of Santa Clara }ss.

On \_\_\_\_\_ 2014, before me, \_\_\_\_\_ a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Labor and Material Bond Page 4 of 4

EXHIBIT C

RECORDING REQUESTED BY:

CITY OF MORGAN HILL

WHEN RECORDED MAIL DOCUMENT TO:

CITY CLERK  
CITY OF MORGAN HILL  
17555 PEAK AVENUE  
MORGAN HILL, CA 95037

RECORD AT NO FEE  
PER GOVERNMENT CODE SECTION 6103

APN:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**STORMWATER BMP  
OPERATION AND MAINTENANCE AGREEMENT**

THIS STORMWATER BMP OPERATION AND MAINTENANCE AGREEMENT ("AGREEMENT") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, (hereinafter referred to as "COVENANTOR") and the City of Morgan Hill ("CITY").

**RECITALS:**

This AGREEMENT is made and entered into with reference to the following facts:

- A. The CITY is authorized and required to regulate and control the disposition of storm and surface waters as set forth in the CITY's National Pollutant Discharge Elimination System permit.
- B. The COVENANTOR is the owner of a certain tract or parcel of land more particularly described in Exhibit "A" attached hereto (the "PROPERTY").
- C. The COVENANTOR desires to construct certain improvements of the kind or nature described in Morgan Hill Municipal Code Chapter 18.71 (the "ORDINANCE") on the PROPERTY that may alter existing stormwater conditions on both the PROPERTY and adjacent lands.
- D. To minimize adverse impacts due to these anticipated changes in existing storm and surface water flow conditions, the COVENANTOR is required by the CITY to implement Best Management Practices ("BMPs") and to build and maintain, at COVENANTOR's expense, stormwater management facilities ("FACILITIES"), more particularly described and shown in the Stormwater Runoff Management Plan prepared by \_\_\_\_\_ and dated \_\_\_\_\_, which plans and any amendments thereto, are on file with the Public Works Department of the City of Morganhill, California, and are hereby incorporated by reference.
- E. The CITY has reviewed and approved the Stormwater Runoff Management Plan subject to the execution of this AGREEMENT.

NOW, THEREFORE, in consideration of the benefit received and to be received by the COVENANTOR, its successors and assigns, as a result of the CITY'S approval of the Stormwater Runoff Management Plan, the COVENANTOR, hereby covenants and agrees with the CITY as follows:

1. Covenants Running With the Land; Property Subject to Agreement: All of the real property described in Exhibit "A" shall be subject to this AGREEMENT. It is intended and determined that the provisions of this AGREEMENT shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the real property described in Exhibit "A" ("PROPERTY") or any portion thereof and shall be for the benefit of each owner of any of said parcels or any portion of said property and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof. Each and all of the limitations, easements, obligations, covenants, conditions, and restrictions contained herein shall be deemed to be, and shall be construed as equitable servitudes, enforceable by any of the owners of any of the property subject to this AGREEMENT against any other Owner, tenant or occupant of the said property, or any portion thereof.

2. Responsibility for Installation, Operation and Maintenance: At their sole expense, the COVENANTOR, its successors and assigns, shall construct, operate and perpetually maintain the FACILITIES in strict accordance with the Stormwater Runoff Management Plan and any amendments thereto that have been approved by the CITY or the ORDINANCE.
3. Facility Modifications: At their sole expense, the COVENANTOR, its successors and assigns, shall make such changes or modifications to the FACILITIES as may be determined as reasonably necessary by the CITY to ensure that the FACILITIES are properly maintained and continue to operate as originally designed and approved. COVENANTOR agrees that it shall not modify BMPs and shall not allow BMP maintenance activities to alter the designed function of the FACILITIES from its original design unless approved by the city prior to the commencement of the proposed modification or maintenance activity.
4. Facility Inspections by the CITY: At reasonable times and in a reasonable manner as provided in the ORDINANCE, the CITY, its agents, employees and contractors, shall have the right of ingress and egress to the FACILITIES and the right to inspect the FACILITIES in order to ensure that the FACILITIES are being properly maintained, are continuing to perform in an adequate manner and are in compliance with the ORDINANCE, the Stormwater Runoff Management Plan and any amendments thereto approved by the City.
5. Failure to Perform Required Facility Repairs or Modifications: Should either the COVENANTOR or its successors and assigns fail to implement the BMPs, maintain the facilities or correct any defects in the FACILITIES in accordance with the approved design standards and/or the Stormwater Runoff Management Plan and in accordance with the law and applicable regulations of the ORDINANCE 30 days from the date of the written notice from the CITY, the CITY shall have the right to enter the PROPERTY to perform remedial work, for which the CITY will collect reimbursement for such work from COVENANTOR. Additionally, conditions from failure to implement the BMPs or to maintain or correct the FACILITIES shall be deemed a nuisance subject to all procedures, abatement of such conditions and remedies as provided in Chapter 1.18 of the Morgan Hill Municipal Code. In addition, the CITY may pursue other such remedies as provided by law, including, but not limited to, such civil and criminal remedies set forth in the ORDINANCE.
6. Indemnity: The COVENANTOR, its successors and assigns, shall defend, indemnify, and hold the CITY harmless of and from any and all claims, liabilities, actions, causes of action, and damages for personal injury and property damage, including without limitation reasonable attorneys' fees, arbitration fees or costs and court costs, arising out of or related to the COVENANTOR'S, its successors' and/or assigns' construction, operation or maintenance of the BMPs FACILITIES except claims, liabilities, actions, causes of action, and damages that arise out of the CITY's sole negligence or willful misconduct or the sole negligence or willful misconduct of any of the CITY'S employees, agents, representatives, contractors, vendors, or consultants.
7. Obligations and Responsibilities of COVENANTOR: Initially, the COVENANTOR is solely responsible for the performance of the obligations required hereunder and, to the extent permitted under applicable law, the payment of any and all fees, fines, and penalties associated with such performance or failure to perform under this AGREEMENT. Notwithstanding any provisions of this AGREEMENT to the contrary, upon the recordation of a deed or other instrument of sale, transfer or other conveyance of fee simple title to the Property or any portion thereof (a "Transfer") to a third party (the "Transferee"), the COVENANTOR shall be released of all of its obligations and responsibilities under this AGREEMENT accruing after the date of such Transfer to the extent such obligations and responsibilities are applicable to that portion of the PROPERTY included in such Transfer, but such release shall be expressly conditioned upon the Transferee assuming such obligations and responsibilities by recorded written agreement for the benefit of the CITY. Such written agreement may be included in the Transfer deed or instrument, provided that the Transferee joins in the execution of such deed or instrument. A certified copy of such deed, instrument or agreement shall be provided to the CITY. The provisions of the preceding three sentences shall be applicable to the original COVENANTOR and any successor Transferee who has assumed the obligations and responsibilities of the COVENANTOR under this AGREEMENT as provided above.
8. Property Transfer: Nothing herein shall be construed to prohibit a transfer by the COVENANTOR to subsequent owners and assigns.



9. Attorneys' Fees: In the event that any party institutes legal action or arbitration against the other to interpret or enforce this AGREEMENT, or to obtain damages for any alleged breach hereof, the prevailing party in such action or arbitration shall be entitled to reasonable attorneys' or arbitrators' fees in addition to all other recoverable costs, expenses and damages.
10. Further Documents: The parties covenant and agree that they shall execute such further documents and instructions as shall be necessary to fully effectuate the terms and provisions of this AGREEMENT.
11. Entire Agreement: This AGREEMENT constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes all prior agreements, whether written or oral. There are no representations, agreements, arrangements, or undertakings, oral or written that are not fully expresses herein.
12. Severability: In the event any part or provision of this AGREEMENT shall be determined to be invalid or unenforceable under the laws of the State of California, the remaining portions of this AGREEMENT that can be separated for the invalid, unenforceable provisions shall, nevertheless, continue in full force and effect.
13. No Waiver: The waiver of any covenant contained herein shall not be deemed to be a continuing waiver of the same or any other covenant contained herein.
14. Amendment: This AGREEMENT may be amended in whole or in part only by mutual written agreement. Any such amendment shall be recorded in Santa Clara County, California. In the even any conflict arises between the provisions of any such amendment and any of the provisions of any earlier document or documents, the most recently duly executed and recorded amendment shall be controlling.
15. In the event that the CITY shall determine at its sole discretion at any future time that the FACILITIES are no longer required, then at the written request of the COVENANTOR, its successors and/or assigns, the city shall execute a release of this AGREEMENT which the COVENANTOR, it successors and/or assigns, shall record in the Clerk's Office, at its/their expense.

Executed the day and year first above written.

COVENTATOR:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF MORGAN HILL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_